earning $1,270 per month and there is also evidence that after the accident she was practically a vegetable and would have to be nursed for the rest of her life. In other words she has suffered a total loss of earning capacity for the rest of her working life. We are now faced with the difficult task of assessing a fair and reasonable amount for the loss of earning capacity. It has to be borne in mind that damages for personal injuries are not punitive and still less a reward, but they are simply compensation that would give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act, so far as money can compensate. (See *British Transport Commission* v *Gourley*[12] and *M West & Son Ltd* v *Shephard.*[13]) We have therefore to consider an award under general damages which would be commensurate with the injuries sustained but is not a full compensation which might result in ruinous consequences to the respondents. (Per Sir Alexander Cockburn LJ in *Philips* v *South Western Railway Co.*[14])

In this case the appellant has suffered total loss of earning capacity. Such loss in her case would last for the rest of her working life which is roughly another 30 years. Taking into account all past and future contingencies, the fact that the appellant was earning $1,270 per month, her ages at the time of the accident and the multiplier fixed by the legislature in the case of loss of future earnings, we would assess the financial damage the appellant would suffer by first calculating her annual loss of earnings ($1,270 x 12) arriving at the figure of $15,240. We would then deduct 12 1/2% or 1/8 of that sum for income tax which the appellant might have to pay. That of course would be speculative because we do not know if she would have to pay any income tax, and if so, how much. The appellant's net annual income would be $13,335. We would then round up that figure to $13,000 and multiply it by 16 years purchase which works out to $208,000. We were therefore of the view that an award of $200,000 for loss of earning capacity in her case would be fair and adequate. That sum does not include the $80,000 already awarded for pain and suffering which has been agreed upon by the parties. The appellant is therefore entitled to a total of $280,000 as a fair and reasonable award under general damages together with interest thereon at the rate of 8% pa from the date of service of the writ to the date of payment. The amount awarded by the High Court for special damages plus interest at 4% pa from the date of the accident to the date of judgment remains, and the appellant is also entitled to half the costs of this appeal.

Appeal allowed.

Solicitors: *Bachan & Kartar; Othman Hashim & Co.*

Reported by *Prof Ahamd Ibrahim*

Ooi Cheng Aun v Timbalan Menteri Hal Ehwal Dalam Negeri & Ors

HIGH COURT (MUAR) — ORIGINATING SUMMONS NO 24-92 OF 1990
RICHARD TALALLA JC
16 APRIL 1990

Preventive Detention — Order of residence — Deviation from order — Consequence of deviation — Restricted Residence Act 1933

On 14 October 1988, the plaintiff was ordered, under the Restricted Residence Act 1933 ('the Act'), to be detained at Penjara Taiping. Contrary to the terms of the order he was detained at a police station at Taiping for four days before being removed to Penjara Taiping. On 21 November 1988, another order was made, under s 2(ii) of the Act, that the plaintiff reside at Tangkak. When the order was served on the plaintiff he was not informed of the terms of the order nor asked to state the place in which he desired to reside. Then, instead of being conveyed to the place wherein he should have stated he wished to stay, the plaintiff was taken to the Hotel Panorama in Taiping and allowed to remain there at his own expense.

Held, allowing the plaintiff's application:

(1) Orders made under s 2(ii) of the Act should be complied with strictly.

(2) The plaintiff's detention at the police station in Taiping and his being allowed to stay at the Hotel Panorama overnight vitiated the order made on 21 November 1988. The plaintiff's restriction in Tangkak was therefore unlawful.

Cases referred to

1 *PP* v *Koh Yoke Koon* [1988] 2 MLJ 301 (folld)
2 *Phua Hing Lai* v *Timbalan Menteri Hal Ehwal Dalam Negeri & Ors* [1990] 1 MLJ 173 (distd)

Legislation referred to

Restricted Residence Act 1933 s 2(i), (ii)

Christopher Fernando for the plaintiff.
Noorbahri bin Baharuddin for the defendants.

Cur Adv Vult

Richard Talalla JC: An order was made against the plaintiff under s 2(i) of the Restricted Residence Act 1933. The order was for his arrest and detention at the Penjara Taiping, Perak Darul Ridzwan. The order was issued on 14 October 1988. The plaintiff pursuant to the order was arrested on 21 October 1988. Upon his arrest, contrary to the terms of the order, he was detained at Pokok Asam Police Station, Taiping. He was kept there till 25 October when he was removed to Penjara Taiping.

The defendant's explanation for his initial detention at the police station was for the purposes of investigation. There is no evidence was to what that investigation was about. A further reason for the plaintiff's detention at the police station was that the inspector in charge of his case had to attend a Mesyuarat Perancangan Kongsi Gelap at Ibu Pejabat Kontinjen Ipoh, Perak on 22 October, that 23 October was a Sunday and in the circumstances, so it

was alleged, the police officer was not able to complete the investigation of the case immediately, that the investigation was completed on 24 October and accordingly the plaintiff was sent to Penjara Taiping on the morning of 25 October. In reply to this, counsel for the plaintiff relied on the case of *PP* v *Koh Yoke Koon*[1] and the judgment of Hashim Yeop A Sani SCJ (as he then was) and in particular the following passage at p 302:

> In the present case, the language of the detention order is clear and unambiguous. According to the detention order, the respondent was to be detained for two years with effect from 12 December 1986 at the Pusat Pemulihan Akhlak, Pulau Jerejak and nowhere else. The provisions of the Ordinance referred to earlier are also clear and unequivocal that a detention order under s 4 authorizes the detention of a person only at such place as the Minister may direct. Section 12 of the Ordinance provides for the order of removal of a person detained from one place of detention to another place of detention and it is only under an order under s 12(1) of the Ordinance that a person detained in the course of removal shall be deemed to be in lawful custody.

The view I take, following the case last referred to, is that the order of the minister made under s 2(i) of the Act should have been complied with strictly. If it was considered necessary that investigations should be carried out following the arrest and pending the making of an order for restricted residence, the authority concerned should have made arrangements for the place of initial detention to be at a place convenient and conducive to the investigation, if that investigation could not be carried out at the place at which the plaintiff was ordered to be detained.

On 21 November 1988, the minister issued a further order. This order was issued under s 2(ii) of the Act. It was an order for the plaintiff to reside in Tangkak. This order was served on him on the same day at Penjara Taiping. The provisions of s 3(i) of the Act require that the officer in charge of the prison should have informed the plaintiff of the terms of the order and deliver a copy thereof to him and further, require him to state the place in which, consistent with the terms of the order, he desired in the immediate future to reside. The plaintiff contends that this was not done. Subsection (ii) of s 3 provides for the officer in charge to hand over the plaintiff together with a warrant of release in the prescribed form to a police officer appointed by the Chief Police Officer to receive him. Apart from the fact that the plaintiff was received by such a police it is not known whether the provisions of s 3(ii) were met in this case. Upon the plaintiff being received by the police officer, the requirement, see the subsection last referred to, was that he the plaintiff should thereupon be conveyed under police escort to the place wherein he should have stated he wished to reside and there he should have been released. Unfortunately, instead of being conveyed to that place, he was conveyed to the Hotel Panorama, a hotel situated in Taiping town. He was allowed to check into the Panorama Hotel at his own expense and remain there till 22 November. This was an irregularity, to say the least. The explanation for it was to avoid the inconvenience of travelling to Tangkak during the whole night and the lack of manpower to escort the plaintiff during the journey. Counsel for the defendant relied on the case of *Phua Hing Lai* v *Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors*[2] as authority for the action of the police officer in permitting the plaintiff to check in and remain at the hotel being lawful and proper. The passage of the judgment in that case relied on by counsel is as follows:

> Under s 2(i) of the Enactment whenever it shall appear to the minister on such written information and after such enquiry as he may deem necessary that there are reasonable grounds for believing that any person should be required to reside in any particular district or mukim, the minister may issue an order for the arrest and detention of that person. Section 2(ii) of the Enactment then provides that the minister thereafter after such further enquiry as he may deem necessary may make another order (in Form C in the Schedule to the Enactment) that from a date to be stated in the order that person do reside in such district or mukim as may be specified in the order.
>
> Section 3 of the Enactment provides for the implementation of an order made under s 2(ii). For convenience the whole of s 3(i) and 3(ii) are reproduced below:
>
> '3(i) When any such order as is referred to in section 2 subsection (ii) or section 2A has been made with reference to any person, he shall be taken before the Officer-in-Charge of the prison in which he is detained and the Officer-in-charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside.
>
> (ii) As soon as may be after action has been taken under subsection (i), the Officer-in-Charge shall hand over the person to whom the order relates together with a warrant of release in the Form in the Schedule to any Police Officer appointed by the Chief Police Officer to receive him, and the person shall thereupon be conveyed under police escort to the place wherein he states he wishes to reside and shall there be released.'
>
> It can immediately be observed that there is no time frame given in s 3(i) of the Enactment. Since no time is prescribed then according to s 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s 54(2) of the Interpretation Act 1967), then anything which shall be done shall be done with all convenient speed.
>
> There is however a time frame given by s 3(ii) of the Enactment imposed by the words '*as soon as may be after action has been taken under subsection (i)*' appearing in that subsection. The words 'as soon as may be' means as nearly as may be reasonable in the circumstances of the case. See also *Aminah* v *Superintendent of Prison, Pengkalan Chepa, Kelantan* [1968] 1 MLJ 92.
>
> Whoever caused the delay must explain the delay; and it is for the court to decide whether the delay is reasonable under the circumstances.

The view I take is that this case is distinguishable from *Phua Hing Lai*'s case[2] on the facts. To my mind it was

extraordinary that the plaintiff should have been allowed to leave the prison and check into a hotel, indeed at his own cost, to remain overnight and to be taken to the place of his future residence only the next day. The plaintiff was released from the prison at 4.50pm. To my mind it fell within the bounds of the time factor ruled on above for the plaintiff to be released from Taiping prison not at 4.50 in the afternoon but early the next day at such a time as he could have been conveniently conveyed from Taiping to Tangkak.

Accordingly, I find that by reason of the plaintiff's detention at the police station at Asam Kumbang, Taiping from 21 October 1988 to 25 October 1988 and his being allowed upon his release from the Taiping prison on 21 November 1988 to stay at the hotel overnight, the order made on 21 November 1988 is vitiated and consequently the plaintiff's restriction in Tangkak is unlawful.

Application allowed.

Solicitors: *Gunaretnam & Co.*

Reported by *Mathavan Devadas*

Cayman Development (Kedah) Sdn Bhd v Puah Kiew & Ors

HIGH COURT (KEDAH) — ORIGINATING SUMMONS NO 24-377-90
KC VOHRAH J
11 APRIL 1990

Civil Procedure — Injunction — Court can grant injunction even if it gives whole remedy before action tried — Failure to disclose material fact — Liability for damages

Landlord and Tenant — Option to renew — Failure to exercise option until after expiration — Compliance with exact terms of option in order to bind grantor — Padi Cultivators (Control of Rent and Security of Tenure) Act 1967, s 7(2)

The plaintiff obtained an injunction restraining the six defendants from entering, trespassing upon, cultivating or in any way interfering with the land comprised in SP 25559 lot 473 mukim Tajar District of Kota Setar, State of Kedah ('the land'). The plaintiff was the beneficial owner of the land for which the six tenancies for padi cultivation had not been renewed under the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 ('the Act') when they expired in February 1989. No notice to exercise the option to renew was given and the defendants had ceased to pay rentals. There has since been an approved change in the use of the land by the authorities.

The first, fourth, fifth and sixth defendants then applied to set aside the injunction. The court then became aware of the fact that each of them separately had and occupied a house in the land and the houses were also occupied by their family members.

Held, varying the injunction:

(1) The option to renew the tenancy agreements was to be exercised two months before the expiry of the tenancy agreements. The defendants did not exercise the option till after the expiry of the tenancy agreements. An option is a unilateral contract which does not become binding on the grantor of the option until the exact terms of the option are complied with. As the tenancy agreements had expired, and they had not been renewed, there are no subsisting tenancy agreements between the defendants and the plaintiff.

(2) It seems clear that the defendants do not now have a right to cultivate the areas of the land which were the subject matter in the expired tenancy agreements. They ceased to have a right to cultivate their padi land with padi, and it seems clear that the plaintiff has a clear right to exclude the defendants from entering, trespassing upon and cultivating the padi land which previously were allotted to the defendants.

(3) An injunction may be granted even if it would give the plaintiff the whole remedy before the action is tried where plainly there is no defence to the action and the only object in raising the defence is to cause delay.

(4) From the definition of 'padi land' and 'tenant' under s 2 of the Act, the tenancy agreements of the six defendants, 'tenants' under the Act, could only have been in respect of 'padi land' and could not have included any area occupied by their homes. As there was no material before the court on which to determine what legal or equitable rights exist in respect of the areas where the houses of the first, fourth, fifth and sixth defendants stand, and the matter was not addressed by the parties, the injunction granted would not be in respect of the areas on which stand the houses of the defendants.

(5) The plaintiff should have disclosed the matter of the houses on the land when first applying for the injunction. The first, fourth, fifth and sixth defendants are entitled to have access to their houses and the plaintiff shall pay them damages which shall be assessed.

Cases referred to

1 *Bayly* v *Leominster Corp* (1792) 1 Ves Jun 476; 30 ER 446 (refd)
2 *Teo Siew Peng* v *Guok Sing Ong & Anor* [1983] 1 MLJ 132 (folld)
3 *Ismail* v *Haji Taib* [1972] 1 MLJ 259 (refd)
4 *Manchester Corp* v *Connolly* [1970] 1 All ER 961 (folld)
5 *Lee Ying Piew & Ors* v *MP Tan Electrical & Credit Sdn Bhd* [1989] 3 MLJ 228 (folld)

Legislation referred to

Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 ss 2, 5, 7(2)

Chong Siew Ean (Ms) for the plaintiff.
George John for the first, fourth, fifth and sixth defendants.

Cur Adv Vult

KC Vohrah J: On 11 March 1990, I granted to the plaintiff an injunction restraining, briefly stated, the six defendants from entering, trespassing upon, cultivating or in any way interfering with the land comprised in SP 25559, lot 473, mukim Tajar, District of Kota Setar, State of Kedah. The injunction also restrained the six defendants from preparing the land for the planting of padi or any crops. I allowed the